



## Alerts

### SBA Issues FAQ on Questionnaires for PPP Loans in Excess of \$2 Million

December 14, 2020

*Hinshaw Alert*

In [November 2020](#), the Small Business Administration (SBA) issued for comment two questionnaire forms, which would need to be provided by Paycheck Protection Program (PPP) lenders to PPP borrowers who, together with their affiliates, received more than \$2 million in PPP loans.

Previously, the SBA advised PPP borrowers that it would examine all PPP loans in excess of \$2 million, and that a review of the good-faith certification would be part of this examination. With respect to this certification, the SBA also stated that PPP borrowers "must make this certification in good faith, taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business."

The questionnaires make it clear that the SBA will be focusing on for-profit borrowers that:

- Are owned by publicly traded companies or private equity, hedge funds or venture capital firms;
- Paid more than \$250,000 in compensation—gross salary, gross wages, gross tips, gross commissions, and allowances for dismissal or separation—to employees or owners);
- Prepaid debt or paid dividends, or made other capital distributions (except as noted below); or
- Had significant cash or hand at the time the PPP application was filed.

On December 9, 2020, the SBA issued FAQ #53 that indicated the following:

- A PPP borrower should complete the questionnaire form and return it to the lender within 10 business days of receipt. Notably, the SBA has not said when these questionnaires will be distributed.
- To alleviate some of the concerns raised by the questionnaire, the SBA stated that in asking a PPP borrower to complete the questionnaire, it is not "challenging a borrower's certification that is required by the CARES Act. SBA's assessment of a borrower's certification will be based on the totality of the borrower's circumstances through a multi-factor analysis."
- The SBA noted that the necessity certification had to be made in good faith at the time the loan application was made "even if subsequent developments resulted in the loan no longer being necessary." However, the

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questionnaires ask for information from the borrower for activities after the PPP loan was made. In justifying this request, the SBA indicated that in its review process, it may take into account "the borrower's circumstances and actions both before and after the borrower's certification to the extent that doing so will assist SBA in determining whether the borrower made the statutorily required certification in good faith at the time of its loan application."

- In the FAQ, the SBA stated that even after a borrower submits a completed questionnaire, the SBA retains the right to request additional information to complete its review. The SBA also noted that when providing additional information a borrower will be given the opportunity to provide a narrative response to the SBA "explaining the circumstances that provided the basis for the good-faith loan necessity certification."

As we indicated in our client alert from a month ago, we recommend that PPP borrowers who will have to complete the questionnaire begin "preparing their responses and collecting the relevant documents immediately." We further advised that borrowers should carefully complete the form and provide the required documentation to their lenders.